IN THE

Supreme Court of the United States

No.....

HOWELL VAN AUKEN, Administrator with Will Annexed of Estate of Lila Eddy Doebler, and DEAN LUCKING, Guardian Ad Litem of Richard Cleveland and Lila Eddy Cleveland, et al.,
Petitioners and Appellants below,
vs.
SECOND NATIONAL BANK AND TRUST COMPANY of Saginaw, Michigan, as Trustee, etc., C. K. EDDY AND SONS, a Corporation, and CHARLOTTE D. MORGAN,
Respondents and Appellees below

BRIEF FOR PETITIONERS, ADMINISTRATOR AND GUARDIAN, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS OF COURTS BELOW

The oral opinion of the District Court was not printed in the Federal Reporter, nor was its Findings which are at pages 89 to 98 of the Record.

The Per Curiam opinion of the Circuit Court of Appeals is reported in 117 Fed. (2d) 938, and gives no discussion of the Facts or Statement of the Conclusions of the Two Lower Courts or any authorities in support thereof.

II.

JURISDICTION

The date of the decree to be reviewed is February 14, 1941, when the judgment of the District Court was affirmed by the Circuit Court of Appeals.

Appellate jurisdiction is based upon Section 240 (Amended) of the Judicial Code.

III.

SPECIFICATION OF ERRORS

The errors in the decision of the Circuit Court of Appeals, which are relied upon by petitioners are set out in the statement of "Reasons Relied Upon for the Allowance of Writ" in the accompanying petition for writ of certiorari.

Petitioners rely upon, and will urge before this Court, all of the errors therein assigned.

IV.

TWO MAIN QUESTIONS FOR DECISION

First: What was the fair worth of Mrs. Doebler's 7812½ shares in January, 1908?

If, as appellant administrator contends, they were worth from $900,000.00 to $1,000,000.00—then was she defrauded by the sale, Exhibit 18?—since the $15,000 a year annuity—was not even two per cent interest on the principal of $900,000.

Second: How many shares did Lila Eddy Doebler actually own when her brother, Walter Eddy, died in August, 1918, and what were they fairly worth?

NOTE ONE:

Since Arthur Eddy, as President of C. K. Eddy and Sons—swore in tax proceedings that C. K. Eddy and Sons as of December 31st, 1918, was actually worth net $4,411,000—and

not just $2,600,000 as represented by Arthur Eddy—in the sworn appraisal filed in the Probate Court in Walter's Estate—and attached as an Exhibit to the Contract of March 11, 1920—(R. 33)

it is apparent—that *in the deal of March 11, 1920, Mrs. Doebler was only paid,* by her brother Arthur Eddy, for

(1) 4687½ shares at $150 per share—*when she should have been paid for*

(2) at least, 8593¾ shares at $180 a share, for Mrs. Doebler—as one of two equal heirs of Walter

Eddy (who died intestate in 1918) *was absolutely entitled* to one-half of the 17187½ shares owned by him when he died, or

(3) if Walter Eddy held her 7812½ shares in trust for her—then Mrs. Doebler owned 12,500 shares at $180 per share, after Walter Eddy's death.

NOTE TWO:

The complaint in this cause filed by Mrs. Doebler's administrator—does not ask a rescission of the contract of March 11, 1920—but

(1) that Walter Eddy be held a trustee as of his death in 1918 of Mrs. Doebler's 7812½ shares taken from her in 1908—and

(2) that Arthur Eddy's Estate, namely, his trustee, Second National Bank and Trust Company—and his legatee widow, Charlotte D. Morgan be required to pay Mrs. Doebler's administrator the difference, as damages, between the true, fair value of her shares in C. K. Eddy and Sons in 1920—and the sum of $760,000 actually paid her under the agreement of March 11, 1920—Exhibit A, R. 33, under the authority of

Blakeslee v. Wallace, 45 Fed. (2) 347 (6 C. C. A.)

Bollstrom v. Power Car Company, 208 Mich. 15

SUMMARY OF ADMITTED FACTS

POINT I

BOTH THE 1908 AND 1920 DEALS WERE USED BY ARTHUR EDDY TO DEFRAUD HIS SISTER, MRS. DOEBLER

I. *The deal of January 30, 1908, Exhibit 18, R. 159.*

(a) Mrs. Doebler's 7812½ shares in C. K. Eddy and Sons were taken from her by her older brother, Walter Eddy, for an annuity of $15,000.

(b) Both brothers, respectively the President and Secretary of C. K. Eddy and Sons, actively concealed from Mrs. Doebler that her 7812½ shares were then worth upwards of $900,000 and had earnings in the years 1900 to 1907 inclusive of $484,460.

On this subject of the huge earnings or profits, of Mrs. Doebler's 7812½ shares, in the years 1900 to 1907,—it is most important for this Honorable Court to note and keep in mind that *Arthur Eddy actively participated in this fraud of his brother Walter, of January 1908*—by false reassurances made to his sister in 1919 and 1920, namely:

(a) On October 2nd, 1919, Arthur Eddy wrote his sister, Mrs. Doebler, at Baltimore, that:

> "Also, please remember that I was not a party to the contract you made with Walter, and in no way did I influence you in your action. *Please, however, do not understand that I feel it was anything but a wise move on your part and for your good*" (R. 255).

(b) Then under date of March 11, 1920, Arthur Eddy made his contract with Mrs. Doebler, taking

from her, in reality, one-half of C. K. Eddy and Sons worth at least, $2,200,000 for $760,000.

In this contract of 1920, Arthur Eddy was very careful to obtain Mrs. Doebler's waiver of any rights in her 7812½ shares, taken from her in 1908 by her brother, Walter.

For Arthur Eddy deliberately inserted in the 1920 contract—three all important and material, false statements, which related to, and had a direct bearing on, the 1908 deal, namely:

First Insert in Contract:

That in January, 1908, the "accrued and accumulated dividends and earnings on said shares of stock, amounted at that time * * * to $4524.92 (R. 35).

This was false, for the "accumulated earnings" on Mrs. Doebler's shares then amounted to nearly $500,000.

Second Insert in Contract:

That Mrs. Doebler's 7812½ shares had been "sold, assigned and transferred to C. K. Eddy and Sons" by Walter Eddy in his lifetime (R. 35).

This material statement was absolutely false—as appellant points out in the Summary and Reasons *ante.*

It was a vitally material, mis-statement—because if Walter Eddy had not so assigned and transferred her 7812½ shares to the Company—then upon Walter Eddy's death, intestate, in 1918—Mrs. Doebler automatically inherited one-half thereof—or 3906 shares—

almost as many more shares—as Arthur Eddy actually paid her for (as the owner of one-half of Walter's original 9375 block of shares).

Third Insert in Contract:

That C. K. Eddy and Sons, upon Walter Eddy's death in 1918, was only worth about $2,600,000,

when, in fact, Arthur Eddy (after he made his March, 1920, deal with Mrs. Doebler) actually swore, in tax proceedings with his Government, that C. K. Eddy and Sons was worth $4,411,000 on December 31, 1918 (R. 456).

This misrepresentation—accomplished largely by the false inventory and appraisal attached to the contract of March 11, 1920 as Exhibit B (R. 40-43), gave Mrs. Doebler the false information that her family company was only worth in 1919 about one-half its actual value. Had she known its true, real value at that time of about $4,500,000 she would have known the $15,000 annuity given her for her shares in 1908 was wholly inadequate.

II. *The deal of March 11, 1920, Exhibit A, R. 33.*

(1) In the corporation, C. K. Eddy and Sons whose assets were worth $4,657,000 in January, 1920 (R. 422), with 25,000 shares outstanding—*Mrs. Doebler* (as one of the two equal heirs of her brother, Walter Eddy) *was, upon his death, in August, 1918, the owner of:*

(a) One-half of the 17,187½ shares standing of record in Walter Eddy's name at his death—worth $180 a share, namely, $1,546,830, or

(b) One-half of the 9375 shares (originally owned by Walter Eddy) and her own 7812½ shares —making a total of 12,500 shares—worth upwards of $180 a share—namely, $2,250,000.

(2) *But* Arthur Eddy, the younger brother, and President of C. K. Eddy and Sons, in 1919, 1920, actually misrepresented to his sister, Mrs. Doebler, by at least four separate and distinct misrepresentations:

1st. *That* all Walter Eddy owned at his death in August, 1918, was 9375 shares worth $150 each or $1,403,250—see the inventory and appraisal (R. 43).

In fact, Walter Eddy owned of record 17,187½ shares worth $180 a share—

2nd. *That* Walter Eddy had actually and legally transferred Mrs. Doebler's 7812½ shares to C. K. Eddy and Sons before his death.

As a matter of fact—there is no foundation in the record for this contention of appellees—

3rd. *That* C. K. Eddy and Sons was only worth net about $2,600,000 and that since Mrs. Doebler's 7812½ shares had been put into the Company's treasury by Walter Eddy in his lifetime, this left outstanding only 17,187½ shares—each worth $150 of which Walter Eddy died owning 9375—and, therefore, Mrs. Doebler only inherited one-half of the 9375 shares—or 4687½ shares worth $150 a share—

NOTE: In fact there were outstanding 25,000 shares of which Walter Eddy owned, of record, 17187½ shares—worth $180 a share—instead of only the 9375 shares at $150—as misrepresented.

Instead of a company worth only about $2,600,000 in 1919—it was, in fact, worth $4,411,000 as of December 31, 1918—as sworn to by Arthur Eddy (R. 456) and $4,657,000 on January 1, 1920 (R. 422).

In 1919—Arthur Eddy withheld from C. K. Eddy and Sons' books—

(a) $606,000 of profits in Eddy and Glynn (R. 327), and

(b) $950,000 marked "Reserve" which was actual assets, and was returned to the C. K. Eddy and Sons "assets" account after Mrs. Doebler was prevailed upon in March, 1920 to sell her interests in the Company for a mere $760,000.

4th. *That* the "accrued and accumulated dividends and earnings" upon Mrs. Doebler's 7812½ shares in January, 1908, were only $4524.92 (see this recital put in the contract of March 11, 1920 by Arthur Eddy, R. 35)

and, therefore, that Mrs. Doebler's surrender of her 7812½ shares in January, 1908, to her brother, Walter Eddy was upon a fair consideration—and she should make no complaint in 1920—but should reaffirm the deal of 1908.

NOTE: This was a most fraudulent mis-statement of fact by Arthur Eddy in 1920—*to prevail upon Mrs. Doebler to ratify the fraud of 1908.*

In fact, the undisputed record now shows (R. 170 and 346) that the *"accumulated" earnings* or profits on Mrs. Doebler's 7812½ shares in January, 1908, were nearly $500,000 in the years 1900 to 1907—and that all she received was $25,000 in dividends (R. 56).

That Arthur Eddy was actively engaged in reassuring his sister, Mrs. Doebler, in 1919, that she had not suffered by the 1908 deal with her brother, Walter, is shown by Arthur Eddy's letter of October 2, 1919, to her, in which he says:

> *"Please, however, do not understand that I feel it was anything but a wise move on your part and for your good"* (R. 255).

POINT II

SUMMARY OF FACTS LEADING TO THE MARCH 11, 1920, DEAL

The following facts are not in dispute—they appear from the books and records of C. K. Eddy and Sons—produced in open Court by Appellees—

(1) Mrs. Doebler transferred her original 7812½ shares of C. K. Eddy and Sons, in January, 1908, to her older brother, Walter S. Eddy, for an annuity of $15,000 per year, which was paid monthly at $1250.00.

(2) After his death, and until March, 1920, these $1250.00 monthly checks were receipted for in the following form, namely:

> "$1250.00 Baltimore, Md. March 1, 1919
>
> Received from C. K. Eddy and Sons, of Saginaw, Michigan, Twelve Hundred Fifty Dollars in full payment and satisfaction of the installment due me for the month of March, 1919, under the agreement between me and Walter S. Eddy, bearing date January 30, 1908.
>
> Lila E. Doebler
> By V. S. Doebler
>
> (Please sign and return)"

Note that each receipt for all these years from 1908 to 1920 always referred to this money as due "under the agreement between me and Walter S. Eddy, bearing date, January 20, 1908."

(3) *Never prior to Walter Eddy's death on August 4, 1918, did Walter Eddy transfer Mrs. Doebler's 7812½ shares out of his own name,* for:

(a) All annual reports, stock certificates and stock ledger books and all minutes of all stockholders' meetings of C. K. Eddy and Sons always showed Walter S. Eddy as the owner of 17187½ shares—which of course, included Mrs. Doebler's 7812½ shares.

See R. 180 to 189, 468 to 479, 153.

(b) It is most important and very significant that C. K. Eddy and Sons' Annual Report filed with the Secretary of State of Michigan, for the year 1916, shows Walter Eddy owning 16,687½ shares and G. L. Humphrey 500 shares, and Arthur D. Eddy 7812½ shares (R. 477).

This report was signed by both Walter S. Eddy and Arthur D. Eddy (R. 478) and verified by Mr. Humphrey, as Secretary on February 24, 1917 (R. 479).

It is conceded Mr. Humphrey's 500 shares belonged to Walter Eddy (R. 52)—thus showing him the owner of 17187½ shares.

This 1916 Annual Report was verified and filed three years after the letter of February 6, 1914, Exhibit 17 (R. 158) was purported to have been written.

It is inconceivable that the letter of February 16, 1914, was intended to take Mrs. Doebler's 7812½ shares out of Walter Eddy's name and ownership and put them into C. K. Eddy and Sons.

The 1917 Annual Report was verified and filed in February, 1918 (R. 475) and also showed Walter Eddy owning 17187½ shares.

It was only after Walter Eddy had died in August, 1918, that the fraud practiced upon Mrs. Doebler, of placing her 7812½ shares out of Walter Eddy's Estate was attempted —so that Mrs. Doebler, as one of his two equal heirs would not inherit any of her 7812½ shares.

This is clearly shown again by the C. K. Eddy and Sons' stock ledger, Exhibit 16, R. 148—which showed no shares had ever been transferred from Walter Eddy to C. K. Eddy and Sons.

On page 153, Miss Durham, the Secretary, testified:

> "Q. And does that complete these stock ledger accounts of Walter S. Eddy?
> A. It does.
> Q. And prior to his death it doesn't appear from that stock ledger that any stock was ever transferred from Walter S. Eddy to C. K. Eddy and Sons, does it?
> A. No, it doesn't * * *" (R. 153).

(c) All annuity payments in the years 1908 to August 1918, of $1250.00 per month were made by Walter Eddy's personal checks drawn on his own personal bank accounts (R. 430).

(d) No assignment of the contract of January 30, 1908, or any rights or interests thereunder was ever executed by Walter S. Eddy to C. K. Eddy and Sons (R. 159).

(e) No notice or knowledge was ever given to or received by Mrs. Doebler—

prior to Walter Eddy's death—that her brother Walter had transferred her 7812½ shares (or any rights under the contract of January 30, 1908) to C. K. Eddy and Sons.

For great care was always used to make the form of the annuity receipts the same—both before and after 1914—and right up to Walter Eddy's death in 1918—the receipts always recited that the payment was made "under the agreement between me and Walter S. Eddy, bearing date January 30, 1908."

(f) C. K. Eddy and Sons never assumed any obligations under, nor accepted any assignment of, this contract of January, 1908 (R. 348).

No resolution of C. K. Eddy and Sons' directors was ever passed on the subject—nor was the subject ever brought to its attention. See Records of Directors' meetings at R. 183 to 190.

(g) C. K. Eddy and Sons' books contain no entries to show that any of C. K. Eddy and Sons' money or funds ever went to pay Mrs. Doebler any of her $15,000 annuity —prior to Walter Eddy's death in August, 1918 (R. 430).

(h) Mrs. Doebler believed and understood up to her brother Walter Eddy's death in August, 1918, that he owned her 7812½ shares—and she looked to him to make proper restitution some day.

See her letter of December 15, 1919, R. 263-4.

(4) Arthur Eddy's deal with Mrs. Doebler in March, 1920, for her rights—in her brother Walter Eddy's estate and C. K. Eddy and Sons was on the positive representation of Arthur Eddy that his brother, *Walter Eddy, had died with only 9375 shares worth only $150 per share.* See the appraisal and inventory of brother's Estate attached to the March, 1920 contract as an Exhibit A, (R. 40 to 45).

This appraisal was filed in the Probate Court by Arthur D. Eddy—as administrator of his brother Walter's Estate —see page 298 of Record—and this appraisal was actually

stated in the sale agreement of March 11, 1920 made with Mrs. Doebler, to be "a full, true and complete inventory of said estate * * *" (R. 33).

(5) But Walter Eddy died, in 1918, holding the legal title to 17187½ shares—out of 25,000—in a company, C. K. Eddy and Sons—whose assets Arthur Eddy afterwards swore in tax proceedings—had a net worth of $4,411,000—as of December 31, 1918 (See R. 419-21-22).

(6) Even in the final hearing before the District Court —and in the pleadings filed by appellee C. K. Eddy and Sons—

the appellees made every effort to conceal from the appellant administrator the actual, true worth of C. K. Eddy and Sons in 1919 and March, 1920—as disclosed by its records, as appellant will point out.

(7) *It was always concealed* from Mrs. Doebler—to the day of her death in 1938—that her 7812½ shares of C. K. Eddy and Sons (taken from her in January, 1908, by her brother, Walter Eddy, for an annuity of $15,000)

had actually earned net profits in the years of 1901 to 1919, inclusive, amounting to a total of $1,071,627 (R. 170, 346).

Mrs. Doebler sold her shares in 1908, for an annuity of $15,000—having only been paid in the years 1901 to 1907—dividends averaging about $4,000 per year.

Mrs. Doebler, therefore, was paid by her two brothers, Walter and Arthur Eddy, President and Secretary of C. K. Eddy and Sons (in control of the company and all its books and records—located 800 miles from Mrs. Doebler's home in Baltimore)—

(1) An average in the nineteen years of 1901 to 1919—of about $10,000 per year (first in dividends

and after 1907 in the annuity) *as her share of her 7812½ shares' income*—but

(2) *Her 7812½ shares actually earned in net profits in those years of 1901 to 1919 inclusive—an average of $53,000 per year, or over five times what they paid her.*

(8) And Arthur Eddy made Mrs. Doebler believe that the $760,000 C. K. Eddy and Sons (he was the only other stockholder) was paying to her for her one-half of Walter Eddy's 9375 shares (she in reality then owned one-half the company's 25,000 shares or 12,500 instead of merely the 4687½ shares)—was being paid to her in "gilt-edged securities"—and that this left C. K. Eddy and Sons with only securities "which may fluctuate in value and which have the element of chance • • •."

See Mrs. Doebler's letter of September 23, 1919, R. 253, and see the answer of *C. K. Eddy and Sons* (R. 29) stating that:

> "And finally reached an agreement with her brother which took from C. K. Eddy and Sons practically all of its gilt-edged securities, leaving only the speculative and businessmen's investments therein."

But upon final hearing, R. 458, it was proved that after Mrs. Doebler was paid the $760,000 in market value of securities in March, 1920, that C. K. Eddy and Sons had left over twice as much in "gilt-edged securities" as had been turned over to Mrs. Doebler.

(9) It was not until appellant administrator (after final hearing was over one-half completed) had hired certified public accountants to examine C. K. Eddy and Sons books—*that it was found that the statements made in*

(1) Appellee, C. K. Eddy and Sons sworn answer (R. 31) that the Company was only worth $1,800,000 in 1918—and

(2) the testimony of C. K. Eddy and Sons' Secretary, Miss Durham, that the company's surplus as of January 1, 1920—was only $2,398,772.85 (R. 172)

were entirely false.

And Mr. Collins, the accountant, was then able to show the

(1) sworn tax values of $4,411,000—and

(2) that the above "surplus of $2,398,772.85" *was short* by at least $1,600,000 because in two items alone there were found:

(a) hidden profits belonging to C. K. Eddy and Sons of over $605,000, and a

(b) reserve account of $950,000 that *was in fact surplus assets.*

(See Mr. Collins' testimony, R. 421, 325 to 328.)

(10) And these facts remained a complete secret until after Mrs. Doebler had died—and until her administrator had (during the final hearing of this cause) examined C. K. Eddy and Sons' books with expert accountants—during a recess in the hearings in open court.

See pages 172, 177, 178 of the Record for the testimony of Miss Durham, C. K. Eddy and Sons' Secretary—and in charge of its books and records since 1915—where she attempted to make it appear that the company's *surplus assets* on January 1, 1920, were only $2,398,772.85.

Again on page 203 of the Record, Miss Durham, C. K. Eddy and Sons' Secretary, attempted to make it appear that C. K. Eddy and Sons actually owed the co-partnership of Eddy and Glynn the sum of $320,000.

Miss Durham testified that:

"Q. What entries are there upon the books of C. K. Eddy and Sons immediately preceding March, 1920, which refer or direct themselves to this Eddy and Glynn co-partnership and its assets? Did you carry an account, in other words, of this co-partnership on the books of C. K. Eddy and Sons throughout these years preceding 1923, and particularly preceding March, 1920?

A. Yes, there was an account of Eddy and Glynn with C. K. Eddy and Sons books for years.

Q. In what way was that carried; a list of assets, or what?

A. Just an account of Eddy and Glynn. • • •

Q. Is this the half interest belonging to C. K. Eddy and Sons in Eddy and Glynn, this $463,000, or such part of it as is surplus?

A. This shows a credit balance on C. K. Eddy and Sons' books and the Eddy-Glynn account. That would mean instead of being an asset to C. K. Eddy and Sons, we owed them $320,000.

Q. $320,000?

A. Right there for that balance, January 1st.

Q. You owed them money?

A. I say, that is what a credit balance would mean on C. K. Eddy and Sons' books. I don't know what makes them up.

Q. Have we got anything that will tell us what part of the assets of C. K. Eddy and Sons, as of January 1st, 1920, was represented by this half co-partnership interest of the company in the co-partnership of Eddy and Glynn?

A. The assets listed on C. K. Eddy and Sons' books did not represent the assets in Eddy and Glynn. Our connection with Eddy and Glynn is represented there in this account" (R. 202, 203).

It was only towards the close of the hearing that appellant administrator's certified accountant, Kins Collins,

cleared up this entirely misleading testimony of Miss Durham—and showed that actually C. K. Eddy and Sons had over $600,000 due it from Eddy and Glynn on January 1, 1920.

See Record 313, 326, 327.

POINT III

SUMMARY OF CONTROLLING FACTS—ALL SHOWN BY C. K. EDDY AND SONS BOOKS AND RECORDS—AND NOW UNDISPUTED BEFORE THIS COURT

(a) On January 30, 1908, Mrs. Doebler owned 31.2 per cent of C. K. Eddy and Sons, her family's Holding Company.

Her two older brothers, Walter and Arthur Eddy owned the remaining shares.

(b) Walter and Arthur Eddy were held by this Honorable Court of Appeals in *Eddy v. Eddy,* 168 Fed. 590, to have cheated their father's widow in 1908—out of her one-twenty-fourth shares in his estate—her share being valued at about $75,000—

by giving the widow less than $4000.00.

(c) Mrs. Doebler's 31.2 per cent of C. K. Eddy and Sons had actually earned in net profits in the years 1901 to 1907 inclusive *the huge sum of $483,460*—the entire net profits of the company being about $1,600,000 in those seven years (R. 170 and 346).

(d) Mrs. Doebler was paid in these seven years only a total of $25,000 in dividends.

(e) On January 30, 1908, her share in the Company was worth at least $1,000,000.

(f) Mrs. Doebler had no knowledge, in January, 1908, of these huge profits on her shares in the Company—and their great value.

Exhibit 92 (R. 465) was a statement given her by her brothers (R. 324) as of September 7, 1907, which showed her shares at the nominal (par) value thereof, namely, $10 per share.

Exhibit 92, was found among her papers after her death in 1938 (R. 324).

(g) On January 30, 1908, by Exhibit 18 (R. 159), Mrs. Doebler's brother, Walter Eddy, took her whole interest in C. K. Eddy and Sons from her for an annuity of $15,000 a year and $48,000 cash.

(h) When Walter Eddy died suddenly and intestate in 1918—he had actually made a profit on this deal of January 30, 1908, with his sister, Mrs. Doebler, of *$850,000 on the income alone of Mrs. Doebler's 31.2 per cent of the Holding Company shares*—for

(a) Mrs. Doebler's shares had net income in the years of 1901 to 1919 inclusive, of $1,071,000 and

(b) Mrs. Doebler drew in dividends and her annuity the sum of $215,000 in those years—

(c) So when Walter Eddy took over her shares in 1908 for a $15,000 annuity—he gained by the transaction—*in profits on the shares alone in those years*—the sum of over $850,000.

(d) So that if we add to this profit in income, even the mere book value in 1901 of Mrs. Doebler's 7812½ shares, namely, $227,850, we find that when Walter Eddy died in 1918, he had made an actual profit of over $1,075,000 on his one-sided deal with his sister in January, 1908.

(i) As of December 31, 1918, the year Walter Eddy died, his administrator (and sole co-heir with Mrs. Doebler) Arthur Eddy swore in estate tax proceedings that—

C. K. Eddy and Sons was then, in 1918, actually worth (net) $4,411,781.65.

(1) Therefore, in 1918, Mrs. Doebler's 31.2% of the shares of the Company was actually worth $1,-364,000 and

(2) Mrs. Doebler's one-half of her brother Walter Eddy's, 9375 shares in C. K. Eddy and Sons (for he died intestate—leaving only his brother Arthur Eddy and Mrs. Doebler) was actually worth $841,000.

(j) Therefore, it is obvious to anyone—that if Mrs. Doebler was defrauded out of her 31.2 per cent of the shares in January, 1908, and

Walter Eddy died in 1918, holding Mrs. Doebler's 31.2 per cent of the shares, in equity for her—then

her interest in C. K. Eddy and Sons in 1918—when Walter Eddy died was one-half and valued at $2,205,000.

(k) In 1919, her surviving brother, Arthur Eddy—the President of C. K. Eddy and Sons and the Administrator of Walter Eddy's Estate—filed a false inventory of Walter's Estate—in which he valued the shares of C. K. Eddy and Sons on the basis of a total value of the Company of $2,578,000—

which was a fraudulent under-statement of the Company's actual worth of about $2,000,000—for Arthur Eddy well knew C. K. Eddy and Sons had a net worth in 1918 of about $4,500,000. Its profits in the year 1919 alone were $172,000 (R. 170, 346).

In fact, in the years 1901 to 1918 inclusive, C. K. Eddy and Sons had a total net profit of $2,698,000—*which profit alone* was more than Arthur Eddy represented in 1919, to his sister, Mrs. Doebler, the C. K. Eddy and Sons was worth.

(1) In 1919 and 1920, the books of C. K. Eddy and Sons showed the C. K. Eddy and Sons surplus to be $2,398,772, as of January 1, 1920 (R. 172). The capital being $250,000—this made C. K. Eddy and Sons net worth, as carried on its books on January 1, 1920, to be $2,648,000.

To show this figure of at least $1,600,000 less than the Company's true worth—Arthur Eddy concealed over $1,500,000 of assets—by deliberately keeping them off the books of the Company (See Record pages 325 to 328).

Moreover, in June, 1919, Arthur Eddy caused to be filed C. K. Eddy and Sons annual report to the Secretary of State of Michigan showing the Company's condition on December 31, 1918, to be—

All Assets	$3,199,296.88
All Debts	492,582.96
Contingent Liability—and income tax estimated at least	300,000.00
Net Assets	$2,407,000.00

See—Exhibit 47, Record 481.

But after Arthur Eddy had purchased Mrs. Doebler's one-half interest in C. K. Eddy and Sons in March, 1920, he swore to his Government in Washington that *on this same December 31, 1918, C. K. Eddy and Sons had a net worth of $4,411,781.65* (R. 357, 358, and Exhibit 112).

And as of January 1, 1920, C. K. Eddy and Sons filed its sworn income tax report on March 9, 1921 (for the year 1920) which showed

"Total value of C. K. Eddy and Sons, Capital Stock at 1/1/20.....$4,142,396.76"
(Record 457).

(m) And so—Arthur Eddy in March, 1920 was able to buy from his sick sister—living in Baltimore, Maryland, what was actually her one-half of C. K. Eddy and Sons, worth $2,300,000—for $760,000—because Mr. Arthur Eddy had—

(1) filed in March, 1919, in his brother's estate—*a false inventory,* and

(2) concealed over $1,500,000 of assets in two items alone by keeping them off the Company's surplus accounts on its books, and

(3) wrote false and misleading letters to his sister in 1919 respecting the title to and value of her rights and interests in her brother, Walter Eddy's estate and in C. K. Eddy and Sons.

(n) Arthur Eddy died in 1925, without issue, and Mrs. Doebler's daughter, Mrs. Cleveland, and her two grandchildren are the only living, blood issue of Mrs. Doebler's father—who founded C. K. Eddy and Sons in 1893.

IN CONCLUSION—it may be said that the above stated facts—stand undisputed on the record of this appeal—

being conclusively shown by documentary evidence produced from the files and records of C. K. Eddy and Sons itself—which were always in the control of Walter Eddy and his brother, Arthur—the Holding Company's Presidents in the years 1901 to 1925.

ARGUMENT ON LAW

POINT I

MRS. DOEBLER'S RELEASE OF HER 7812½ SHARES ON JANUARY 30, 1908, WAS WITHOUT CONSIDERATION AND WILL BE SET ASIDE AS A FRAUD UPON HER HEIRS

It is respectfully submitted that Walter S. Eddy occupied, in every sense—a fiduciary relationship toward his sister in January, 1908, and

that his unconscionable bargain should be set aside.

It is further submitted that this Honorable Supreme Court has never placed its approval upon such an overreaching as this—but

has consistently held fiduciaries to strict accounting for such breaches of trust.

Let us recall briefly that in 1908, Walter Eddy was—

(1) Executor of his Father's Estate;

(2) President and largest stockholder of C. K. Eddy and Sons, the family holding company

(3) An astute business man, entirely familiar with all the assets and details of C. K. Eddy and Sons—and

(4) The trusted, older brother of an inexperienced, sickly sister—and

That Walter S. Eddy dealt with his sister—while she was

(1) In debt to C. K. Eddy and Sons—

(2) Had previously endorsed all her stock certificates over to him, without any protecting writing—and

(3) Was drawing but an average of $4,000 annually in dividends—when her stock was earning in the years 1904 to 1907 over $100,000.00 annually— of which huge profits she was purposely kept in ignorance.

A.

An Administrator or Executor occupies a fiduciary relationship to an heir and legatee.

Cowen v. Adams, 177 U. S. 471, 483.
Eddy v. Eddy, 168 Fed. 590 (6 C. C. A.); cert. denied 214 U. S. 518.
In re Bancourt's Estate, 279 Mich. 518, 526.

In *Cowen v. Adams, supra,* the Supreme Court, in its opinion, said:

> "Neither do we stop to consider the charge of fraudulent conduct on the part of the administrators, for independently of those considerations we are of the opinion that equity will not enforce this receipt or release. It was a surrender by William Means, without any consideration, of practically his whole interest in his father's estate, amounting to between $100,000 and $200,000. The administrators were acting in a fiduciary capacity. * * *
>
> While a man in the full possession of his faculties and under no duress may give away his property, and equity will not recall the gift, yet it looks with careful scrutiny upon all transactions between trustee and beneficiary, and if it appears that the trustee has taken any advantage of the situation of the beneficiary, and has obtained from him, even for only the benefit of other beneficiaries, large property without consideration, it will refuse to uphold the transaction thus accomplished. *Taylor v. Taylor,* 8 How. 183; *Comstock v. Herron,* 6 U. S.

App. 626-637, and cased cited; *1 Story's Eq. Jur.*, secs. 307, 308; *2 Pomeroy's Eq. Jur.*, secs. 951, 958, 1088. So, without considering the debatable questions presented in respect to this receipt or release, we are of opinion that the Circuit Court of Appeals was right in refusing to uphold it."

A Trustee who pays $48,000. for property worth $1,000,000 —and deliberately conceals its true worth—must account in equity.

In *Griffith v. Godey,* 113 U. S. 89, the Supreme Court held:

"A probate settlement of an administrator's account does not conclude as to property fraudulently withheld from it. * * *

The facts of this case disclose a case of deception and fraud, practiced upon a person of weak intellect, and a conspiracy to obtain his property for a consideration so grossly inadequate, as to warrant the intervention of a court of equity."

B.

AN ELDER BROTHER — "AN EXPERIENCED BUSINESSMAN" HAS THE BURDEN OF REMOVING "EVERY ELEMENT OF DOUBT OR SUSPICION THAT MAY ATTACH" TO A CONTRACT WITH HIS YOUNGER SISTER.

Bowen v. Kutzner, 167 Fed. 281 (4 C. C. A.).

"HE KNEW EVERYTHING AS TO THE CONDITION OF THE PROPERTY JOINTLY THEIRS: SHE IN EFFECT NOTHING" * * * "AND THE LAW THUS RIGHTFULLY PLACES THE BURDEN UPON HIM."

Fourth Circuit Court of Appeals Opinion in 167 Fed. at 300.

C.

INADEQUACY OF CONSIDERATION IN DEALINGS BETWEEN A TRUSTEE AND HIS *CESTUI QUE* TRUST RAISES A PRESUMPTION OF FRAUDULENT OVERREACHING.

The Court of Appeals in *Cowen v. Adams, supra,* at pages 553 of 78 Fed. Rep. said:

> "Where the transfer is of a large sum, and constitutes the whole of the property of the party making it, himself having obligations to those in need, to one standing in no need, it raises an almost insurmountable presumption that there has either been some untoward influence or gross misconception on the part of the party making it of his rights and obligations."

And at page 552, of its opinion, said:

> "The absence of adequate consideration in itself raises a presumption of unfairness which the trustee is bound to repel."

Thus in *Ballentyne v. Smith,* 205 U. S. 285, a foreclosure sale of property worth at least seven times the sum bid, was set aside, the Court saying:

> "But if there be great inadequacy slight circumstances of unfairness in the conduct of the party benefited by the sale will be sufficient to justify setting it aside."

While in *Re Jewett Oil Co.,* 86 Fed. (2) 497 (7 C. C. A.), a sale of property by a Trustee in bankruptcy worth $5,000.00 for $300. was set aside, the Court saying:

> "The assignment by its terms conveys too great an interest to the purchaser, and appellant seeks

to take advantage of the actual language of the instrument. A court of equity cannot permit this to be done. The disproportion between the sale price and the value of the contract sold (as claimed by appellants) shocks the conscience of the court."

Where a fiduciary relation exists—any transaction which amounts in fact to a gift, is presumed fraudulent in the absence of clear showing of fairness.

Kellahin v. Henderson, 81 Fed. (2) 128 (5 C. C. A.).
Thaw v. Thaw, 27 Fed. (2) 729 (2 C. C. A.)
Floyd v. Floyd, 11 Fed. (2) 841 (7 C. C. A.)

POINT II

NO TRANSFERS BY WALTER EDDY IN 1914 OF MRS. DOEBLER'S 7812½ SHARES WAS HAD TO C. K. EDDY AND SONS

The record shows conclusively that—

(1) Walter Eddy died August 4, 1918, owning of record the 7812½ shares taken from his sister under the release of January 30, 1908.

(2) No endorsement or assignment of the certificates was ever made by him.

(3) All Company records, including the stock ledgers, stock certificate book, annual reports, minutes of stockholders' meetings all stated Walter Eddy to be the owner of these shares.

(4) Walter Eddy continued to his death to pay Mrs. Doebler the $15,000 annuity in monthly payments of $1250.00 by his own personal checks drawn on his own personal bank account.

All receipts signed by Mrs. Doebler (or her husband for her) were in the same form, namely:

"Exhibit 2-d

$1250.00 May 1st, 1916

Received from Walter S. Eddy twelve hundred and fifty dollars, being payment for the month of May, 1916, as per agreement dated January 30th, 1908.

Lila E. Doebler,
By V. S. Doebler.

(Please sign and return)" (R. 445).

Therefore, it is submitted that the secret bookkeeping entries on C. K. Eddy and Sons Journal—and the letter (R. 158) of February 6th, 1914—could not transfer any title of Mrs. Doebler's 7812½ shares to C. K. Eddy and Sons.

Act 106 of the Public Acts of 1913 of Michigan, provides in part:

> "Title to a certificate and to the shares represented thereby can be transferred only,
>
> (a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or
>
> (b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.***"

C. L. 1929, Sec. 9520; Effective August 14, 1913.

Therefore, there could be no transfer of Mrs. Doebler's 7812½ shares by Walter Eddy to C. K. Eddy and Sons, prior to his death in 1918.

Marshall v. Commissioner, et al., 57 Fed. (2) 633 (6 C. C. A.)
Bardach v. Commissioner, et al., 90 Fed. (2) 323 (6 C. C. A.)

In *Marshall v. Commissioner, supra,* this Court stated in its opinion that:

> "While Mrs. Marshall was advised by her husband that he intended to give all his holdings of capital stock to her, it is quite evident, as to those shares not transferred upon the books of the issuing companies, that there was not a complete relinquishment of dominion and control of the subject-matter of the gift, and, we think, that there was no such conveyance or assignment as operated to divest the donor of legal title or to vest such legal title in the donee, whatever may have been the equitable rights of the parties after the indorsement of the certificates in blank."

And no decision by either of the Lower Courts was made on this vital question—and no issues were framed or any claimed transfer or assignment of Mrs. Doebler's 7812½ shares was ever pleaded by the appellees and respondents.

POINT III

THE CONTRACT OF MARCH 11th, 1920, WAS FRAUDULENTLY PROCURED BY ARTHUR D. EDDY FROM HIS SISTER, MRS. DOEBLER

Upon Walter S. Eddy's death in August, 1918, his surviving brother, Arthur D. Eddy, became president of C. K. Eddy and Sons—and Administrator of Walter Eddy's estate—

What was said in the opinion in *Eddy v. Eddy* (168 Fed. 590) as to the duties of Walter Eddy as Executor of his Father's estate—

applies with equal force and reason in the dealings of Arthur Eddy in 1919 and 1920 with Mrs. Doebler, for her interests in Walter's Estate and C. K. Eddy and Sons.

And Arthur Eddy, as president of the family corporation, was under strict rules in dealing with his sister—or any other stockholder.

For it is well settled that:

I. If an officer deceitfully and fraudulently creates a materially false impression as to the "true worth" of his Company's shares—a stockholder may accept such representations as founded in "fact"—and need not make an independent verification from the books of the Company.

II. The issue is simple—did Arthur Eddy falsely and fraudulently create the impression that it was to the financial advantage of Mrs. Doebler to sell her stock to the Company on the terms of the contract of March 11, 1920?

Blakeslee v. Wallace, 45 Fed. (2) 347 (6 C. C. A.)

To the same effect—and holding that a false representation by the active head of a corporation, that a stockholder was getting fair value for his shares and making a good bargain in selling them—was actionable in an action in equity for damages and an accounting.

See—

Bollstrom v. Power Car Company, 208 Mich. 15.

And see—

Backus v. Kirsch, 264 Mich. 339, 342.
Buckley v. Buckley, 230 Mich. 504, 509.

POINT IV

THE DEFENSE OF LACHES IS NOT AVAILABLE IN THIS CASE—ARTHUR EDDY'S WIDOW AND THE CHARITABLE TRUST HAVING THEMSELVES RECEIVED THE BENEFIT OF HIS FRAUDULENT OVERREACHING OF MRS. DOEBLER IN MARCH, 1920

Cowen v. Adams, supra.
Pond Creek Coal Co. v. Hatfield, 239 Fed. 622 (6 C. C. A.)
Elk Horn Coal Co. v. Hackworth, 61 Fed. (2) 304 (6 C. C. A.)
Williams v. American Ass'n., 197 Fed. 600 (6 C. C. A.)
Liverpool, etc. Co. v. Crosby, 83 Fed. (2) 647 (6 C. C. A.)
Alexander v. Trust Company, 249 Fed. 1 (3 C. C. A.)
Harris v. Egger, 226 Fed. 398 (6 C. C. A.)
Mancourt, etc. Co. v. St. Clair, etc. Co., 260 Fed. 330, opinion by J. Tuttle

In re Brower, 51 Fed. (2) 123, opinion by Judge Simons
Angeloff v. Smith, 254 Mich. 99
Oswald v. Camac, 65 Fed. (2) 610 (5 C. C. A.)
Townsend v. Vanderwerker, 160 U. S. 171, 185, 186
McIntire v. Pryor, 173 U. S. 38
Michoud v. Girod, 4 How. (U. S.) 503
Meader v. Norton, 11 Wall. (U. S.) 442

IT IS NOT A DEFENSE TO MRS. DOEBLER'S ADMINISTRATOR'S ACTION THAT WALTER AND ARTHUR EDDY ARE DEAD — THE IMPORTANT EVIDENCE IS ALL A MATTER OF WRITTEN DOCUMENTS AND C. K. EDDY AND SONS' RECORDS, ETC.

See—

Oswald v. Camac, 65 Fed. (2) 610 (5 C. C. A.)

While in *Townsend v. Vanderwerker,* 160 U. S. 171, 185, 196, the Supreme Court said:

> "3. We are also of opinion that, under the peculiar circumstances of this case, the bill is not open to the defense of laches. It is true the advances were made at sundry times from 1879 to 1884, and the bill was not filed until 1889, but the delay is sufficiently accounted for by the intimate personal relations that had always existed between the plaintiff and Mrs. Marvin, and the unlimited confidence he had reposed in her. * * *
>
> "The question of laches does not depend, as does the statute of limitation, upon the fact that a certain definite time has elapsed since the cause of action accrued, but whether, under all the circumstances of the particular case, plaintiff is chargeable with a want of due diligence in failing to institute proceedings before he did. In this case, we think the delay is fully explained. *Gunton v. Carroll,* 101

U. S. 426. It is true that one of the parties to this alleged agreement has died, and that the court has lost the benefit of her testimony with regard to the alleged agreement. This however, is a circumstance to be considered by the court in weighing the evidence, rather than as an obstacle to the maintenance of the bill upon demurrer."

And see the case of *McIntire v. Pryor*, 173 U. S. 38.

While in *Michoud v. Girod*, 4 How. 503, this Supreme Court of the United States held that this was a case of actual fraud committed by trustees of real estate against their *cestui que* trust. A bill filed thirty-six years after the commission of the fraud was held not to have been too late. In that case a purchase by an executor through a third person, of property of the testator, was held to be fraudulent and void, though the sale was at public auction, judicially ordered, and the result of the evidence was that a fair price was paid.

Thus in Many of the Foregoing Decisions Long Periods of Delay in Bringing Suit Were Held to Be No Defense—as

(a) 22 years—*Pond, etc. Co. v. Hatfield* (6 C. C. A.)

(b) 21 years—*Elk Horn Co. v. Hackworth* (6 C. C. A.)

(c) 50 years—*Williams v. Ass'n.* (6 C. C. A.)

(d) 46 years—*Alexander v. Trust Co.* (3 C. C. A.)

(e) 9 years—*McIntire v. Pryor* (U. S. Sup. Ct.)

(f) 36 years—*Michoud v. Girod* (U. S. Sup. Ct.)

(g) 26 years—*Meader v. Norton* (U. S. Sup. Ct.)

CONCLUSION OF BRIEF

It is most respectfully submitted that:

A. Walter Eddy in 1908 and Arthur Eddy in 1919 and 1920 held fiduciary relations and duties to their sister, Mrs. Doebler—and could not profit by their deals with her for her stock interests in their family Company, C. K. Eddy and Sons.

Cowen v. Adams, supra
Eddy v. Eddy, supra

B. Nor can Arthur Eddy's legatees under his will—his widow, his niece and the charitable trust—so profit.

Cowen v. Adams, supra

C. Mrs. Doebler's 7812½ shares were obtained from her in 1908, without consideration, and Walter Eddy held them for her at his death in August, 1918, as her trustee.

D. Walter Eddy did not intend to and did not legally transfer any interest in Mrs. Doebler's 7812½ shares to C. K. Eddy and Sons in 1914 by the letter of February 6th, 1914, Exhibit 17.

Marshall v. Commissioner, supra (6 C. C. A.)

E. Mrs. Doebler in 1919, owned one-half of C. K. Eddy and Sons—and her interests were fraudulently taken from her by her brother, Arthur Eddy, by manifestly false and fraudulent representations of material facts —and she is entitled to the difference between the actual, true worth of her one-half interest in this Company's stock—and what she received from Arthur Eddy for it—

Blakeslee v. Wallace, supra
Bollstrom v. Car Co., 208 Mich. 15
Backus v. Kirsch, 264 Mich. 339
Buckley v. Buckley, 230 Mich. 504

It is further submitted to this Honorable Court that throughout the entire period of 1908 to final hearing of this case in 1938—*there was a deliberate, wilful concealment of the true value and worth of C. K. Eddy and Sons*—

First—by Walter and Arthur Eddy in their entire dealings with their sister—

Second—by the pleadings in this case—because—

(a) Mrs. Doebler's Administrator charged in his counter claim that in 1918 and 1919, C. K. Eddy and Sons was worth at least $4,500,000 (R. 12).

(b) In C. K. Eddy and Sons' Answer, filed September 14, 1938, this Company deliberately stated that it was worth at Walter Eddy's death in 1918, $1,800,000 (R. 31).

We now know that in 1924, C. K. Eddy and Sons' officers swore in their tax protests that at Walter Eddy's death in 1918, it had a net worth of $4,411,000 (R. 456).

We respectfully ask that the Petitioners be granted this Honorable Court's Writ of Certiorari—and on final hearing the full relief prayed for, namely, the difference between $760,000.00 actually paid Mrs. Doebler in 1920 by Arthur D. Eddy—and the true, actual value in 1920 of one-half of C. K. Eddy and Sons' shares owned by Walter Eddy,

namely, 17,187½ shares held by him at his death intestate in 1918.

Respectfully submited,

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